IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 875 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

DINESHBHAI C PATEL

Appearance:

MR HM PRACHHAK, APP for Appelant - State

MR DD VYAS for Respondent No. 1-13

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/01/2004

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by the State by obtaining leave of this Court, against the judgment and order delivered by learned Sessions Judge, Valsad at Navsari on 10.4.1986, acquitting the present respondents of the charges under Sections 147, 148, 149 and 302 of the IPC in Sessions Case No. 49 of 1985.

2. The incident, which culminated in prosecution of 13 accused, occurred on 28 June, 1985 at village Vankal, On that day, deceased Amaratbhai and his two sons Mukesh and Suresh had been to Chikhli for attending the proceeding taken by the Police against them before the Executive Magistrate. While, they were returning from Chikhli to village Vankal, which is at a distance of 3 to 4 kms, on a bicycle at about 6.30 p.m. they noticed all the 13 accused rushing towards them near High School building of Vankal. All the accused were laced with weapons like iron pipes, iron rods, axes, etc. According to the prosecution story, the accused as well as the complainant party are residents of Madhiya Falia of Vankal, and there is some enmity between the parties on account of election, etc. On noticing 13 accused rushing towards deceased Amrathbhai and his two sons, Mukeshbhai PW-2 and Suresh PW-4 got down from the cycle and ran towards a shop belong to one Ranchhodbhai Bhagabhai. Deceased Amrathbai also leaving cycle on the road, ran towards the land of Ranchhodbhai Bhagabhai, in which his shop is situated. The accused over-reached deceased Amrathbhai and accused No.4 inflicted an axe blow on the head of the deceased, accused No.6 inflicted an iron rod blow on the head of the deceased and, therefore, the deceased had fallen down on the road. Thereafter, all the accused surrounded the deceased lying on the grass land and inflicted number of blows. PW2 and PW4 witnessed the incident from the distance of 50 and 60 feet and thereafter ran towards their house. After reaching their house, they talked to their mother and other persons that Amrathbhai was injured and was lying in the land of Ranchhodbhai Bhagabhai. The family members of the deceased reached at the scene of offence immediately. While going to the house, pant of PW-2 was torn and therefore he waited at the house to change the cloth and thereafter PW-2 and PW-4 also reached at the scene of offence. In the meantime, one Maganbhai Dayalji Patel, PW-5 of village Vankal came to the spot by motorcycle and having seen the position of the deceased, immediately informed the Police at Chikhli, and in response, Police reached at the spot. Thereafter, in police jeep, deceased was taken to Bilimora Hospital, where he died and thereafter at about 8.40 p.m.,

complaint of PW-2 was recorded by PSI Vikramsinh Virsingh Rathod, PW-10, of Chikhli Police Station, and the same has been produced on record at Exh.37. After completion of the investigation, a charge sheet came to be filed against all the 13 accused for the offences punishable under Sections 147, 148, 149 and 302 of the IPC. The case was committed to the Court of Sessions at Valsad and registered as Session Case No. 49/85. Charge against the respondents was framed by learned Sessions Judge vide Exh.1 on 29th of March, 1986 for the above said charges. The respondents pleaded not guilty and, therefore, prosecution examined as many as 10 witnesses and produced the documentary evidence to prove its case. After hearing both the parties, learned Judge came to the conclusion vide its judgment and order impugned in this appeal that the prosecution failed to prove the case against the respondents beyond reasonable doubt and the accused persons respondents were acquitted of all the charges levelled against them. Being aggrieved, this Appeal is preferred by the State.

3. In this Appeal, learned APP Mr. H.M. Prachhak for the State and learned Counsel Mr. D.D. Vyas for the respondents were heard.

4. On careful scrutiny of the record and evidence available, it is found that the prosecution examined two eye witnesses i.e. PW-2 and PW-4 Mukeshbhai and Sureshbhai, both sons of the deceased Amrathbhai. PW-1 Maganbhai Nichhabhai Patel, Revenue Circle Inspector, produced map of the scene of offence on record. Prosecution examined Rancchodbhai Bhagabhai as PW-3 Exh. 20, but Rancchodbhai Bhagabhai turned hostile and did not support the prosecution case though it was a specific case of two other eye witnesses PW-2 and PW-4 that Ranchhodbhai Bhagabhai was observing the incident. Prosecution examined Maganbhai Dayalji Patel, PW-5 Exh. 22, who reached at the spot after the incident was over and informed the police at about 6.00 p.m. He also stood as surety in a proceeding taken by the police against the deceased and his two sons before the Executive Magistrate at Chikhli. The prosecution has examined Sumanbhai Sukkarbhai Patel as PW-6 Exh. 29 younger brother of the deceased, who, on coming to know from PW-2 and PW-4, reached at the spot and found deceased lying on the gross land belong to Ranchhodbhai Bhagabhai. PW-7 at Exh. 30 the prosecution examined Allarakhu Gulab Multani, a panch witness of discovery panchnama of the weapons from the accused. This panchnama could not be proved by the prosecution because PW-7 did not support the panchnama.

Prosecution examined Dilipbhai Ishvarbhai Dalal, PW-8, Exh.32 who conducted the postmortem examination of dead body of Amrathbhai at 8.30 a.m. on 29.6.85. He found five injuries on the dead body, as per Column-17 of the postmortem note, which is at Exh.33. According to Doctor, the deceased had following external injuries .

Compound fracture (1)

1. Humorur H/3 CLW1/2

2. Coll's fracture (Rt) writ It.

3. Incised wound (Rt) Paneto occipital regions 3" x 1/2" Bone deep with fracture occipital bone.

4. C.L.W. Occipital regions 2"x 1/2".

According to this witness, the death was due to shock and haemorrhage, due to extradural hage at (Rt) occipita parietal regions with fracture humerus (L) (compound) lollary had injury. The prosecution examined Patangrav R. Rajghar as PW-9 Exh. 34 being Head Constable of Chikhli Police Station, who had conducted the proceedings against deceased and his two sons on the day of the incident upto 4.30 p.m. Lastly, prosecution examined Vikramsingh Virsingh Rathod, as PW-10, Exh.35 of Chikhli Police Station, who had investigated the offence.

5. Learned APP Mr.Prachhak submitted that the impugned judgment and order is erroneous because there are two eye witnesses, and they are natural witnesses of the incident, who are not believed by the learned Sessions Judge, for the reasons which could not be accepted. It was submitted that PW-2 Mukeshbhai and PW-4 Sureshbhai were accompanying deceased on bicycle, one was sitting in front and one was sitting in the back when cycle was driven by the deceased while coming from Chikhli and the incident occurred. It was submitted that both the witnesses have supported the prosecution case and the complaint filed. No major contradictions found from their evidence and they are credible witnesses. The homicidal death of the deceased was proved by PW-8 Dr. Dilipbhai Ishvarbhai Dalal. It was also contended that both the eye witnesses are supported by the medical evidence. PW-5 Exh.22 Maganbhai Dayalji Patel has also supported the prosecution case though he is not an eye witness, but the fact is proved through his evidence that the deceased was lying on the ground and he informed the Police, and on his informing, the Police reached at the

spot. According to learned APP, the reasons given by the learned Trial Judge for the acquittal are not cogent and sound, and the interference of this court in the above said circumstances in the impugned judgment and order is called for. It was submitted that all the respondents be convicted after allowing the appeal for the charge framed against them and be punished.

6. While learned Senior Counsel Mr. D.D. Vyas for the accused respondents vehemently supported the judgment and order impugned in this Appeal.

7. We have carefully gone through the evidence of each witness and documentary evidence produced on record. We have gone through the judgment of the Trial Judge and the reasoning given by him for the acquittal of the present respondents of the charges levelled against them. However, the appeal filed against the acquittal must be carefully scrutinised and evaluated. True that the plenitude of the power available to this court hearing an appeal against acquittal is the same as that available to a court hearing an appeal against an order of conviction, but this court should not interfere with an order of acquittal only because different plausible views may arise on the evidence and the court may think that the view taken by the Trial Court of the evidence is not correct. In acquittal appeals, the court must come to the conclusion that, the view taken by the learned Judge while acquitting cannot be the view of a reasonable man. On materials on record, the court examining the acquittal appeals, must examine the reasons on which the order of acquittal is based and must reach to the conclusion that the view taken by the acquitting judge was clearly unreasonable, erroneous and could not have been taken in the facts and circumstances of the case. This is so because the principle of presumption of innocence of the accused persons continues in acquittal appeal and ordinarily the views of the trial court as to the credibility of the witnesses and the weight and consideration attached to the evidence must be given proper appreciation. Unless it is reached to a concrete conclusion that the reasons for the acquittal are not tenable at all, then and then only the order of acquittal should be interfered with and not lightly or merely because some other view is possible. Sound logic after exercising careful scrutiny of overall circumstances of the case is required to dislodge the reasoning of acquittal. In this case now we shall examine the reasons given by the Trial Judge for acquitting the respondents, which are as under :

(i) The Police could not found the cycle for which an explanation is given by PW-2 that he had taken away the cycle. Noteworthy it is that the cycle is not referred in Fist Information Report at Exh. 37.

(ii) Only if it is proved by the prosecution that PW-2, PW-4 and deceased were riding the same cycle, then only it could be established beyond reasonable doubt that PW-2 and PW-4 were the real eye witnesses. Witnesses while rushing towards their house, jibbed for three minutes and noticed the incident, recognized 13 accused including weapons they were carrying and deposed mathematically. On touchstone of probability the version of these witnesses is not creditworthy.

(iii) There is important contradictions between FIR and deposition of PW-2 and PW-4 in respect of blow given by accused No.4 and accused No.6. It is brought on record that all 13 accused started inflicting blows to the deceased while in deposing both the witnesses says that first accused No.4 and accused No.6 inflicted blow on the head and then rest of the accused started beating the deceased. This part is important omission in the FIR and contradiction affecting the prosecution case. Eye witnesses says that all the 13 accused inflicted random blows on the body of the deceased but as per the medical evidence, the deceased was found having only five injuries. Had the versions of the eye witnesses were true, the deceased must have numerous injuries. None of the eye witnesses either reveals to their family members when they reached to their house or to witness Maganbhai Dayalji or to the Police when the dead body was shifted to hospital, the names of the accused and it is proved from the deposition and contradiction proved through I.O. Till the recording of the First Information Report and till the death of the deceased in the hospital, the only material which both the eye witnesses revealed before the family members, witness Maganbhai Dayalji and Police that the deceased was beaten omitting the names of the assailants. The theory which PW-2 Mukuesbhai advanced about his pant being torn in running, appears to be camouflaged because they reached to the spot little late, and after all the family members reached there. This casts doubt about they being present at the scene of

offence when incident occurred.

(iv) Even Maganbhai Dayalji Patel PW-5 Exh. 22 who informed the Police at about 6.30 informed only that "opposite party" had beaten the deceased, which his proved by the deposition of PW-10 Investigating Officer Vikramsingh Virsingh Rathod. The explanation offered by both the eye witnesses for not stating the names of the accused before 8.40 p.m., the time on which the FIR was recorded are not acceptable because the only explanation which witnesses offered is that they were frightened and confused.

(v) There is a probability of planting of the accused which is asked to the witnesses in cross-examinations.

(vi) Investigating Officer, PW-10 Vikramsingh Virsingh Rathod stated that on way from the scene of offence to Bilimora Hospital, both the eye witnesses were accompanying him, but on inquiry no detailed facts could be elicited from the eye witnesses.

10. On reappraisal of the evidence along with the above reasoning of the Trial Judge, we found that there is nothing on the record to come to the conclusion that the reasons for acquittal recorded by the Trial Judge are not tenable. On careful scrutiny of the evidence and the record of the case, not only the reasons advanced by the Trial Court are by no means weak or untenable but are found good and sturdy by us. Not a single reason is found to dispel any of the grounds found by the Trial Judge for the acquittal. We have also found that the appreciation of the evidence undertaken by the Trial Judge does not suffer from any flaw nor the Trial Judge misappreciated the evidence and arrived at grossly unjust conclusion forming unreasonable view against the weight of the evidence so as to reverse the order of acquittal. Above all, the view of the prosecution is PW-2 and PW-4 were present at the scene of offence and the case hinges on their testimony. So many dents are found as aforesaid in the deposition of both the eye witnesses to conclude that the other view is probable that none of the eye witness was present at the scene of offence when the incident occurred. The view favourable to the accused in the facts and circumstances of this case is adopted by the Trial Judge through sound reasoning and rightly so, as we have found on reappraisal, the presence of both the

witnesses at the scene of offence, is badly shaken by the circumstances of the case and contradictions brought on record by the defence. The facts vital to the prosecution case are (1) the eye witnesses along with deceased travelled by a cycle upto the scene of offence, (2) the eye witnesses observed the incident and identified all 13 accused along with weapons, but (i) non-revealing of the names of the accused till 8.40 pm on the same day by the two eye witnesses and (ii) no proper explanation about cycle by the prosecution case along with other contradictions as abovesaid, have become fatal to the prosecution case and ultimately these vital facts could not be proved by the prosecution beyond doubt. Therefore we are unable to apply any logic to disbelieve the reasoning of the trial court for the acquittal, and we agree and sustain the grounds of the acquittal as recorded by the trial judge on correct appreciation of the evidence available on record. Ultimately, we cannot help the appellant - State in assailing the judgment and order of acquittal which is impugned in this appeal, unhesitatingly therefore the appeal must meet with the fat of dismissal and dismissal only.

11. In the result, the Appeal of the State against the acquittal stands dismissed. Bail bonds of each of the accused stand cancelled.

(B.J. Shethna, J.)

(J.R. Vora, J.)

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